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11 Attorneys for Plaintiff, Counterclaim Defendant WYNN LAS
 12 VEGAS LLC d/b/a WYNN LAS VEGAS

13 **UNITED STATES BANKRUPTCY COURT**
 14 **DISTRICT OF NEVADA**

16 In re:
 17 GGW BRANDS, LLC, et al.
 18 Debtors.

19 WYNN LAS VEGAS LLC dba WYNN LAS
 20 VEGAS, a Nevada limited liability company,

21 Plaintiff, Counterclaim
 22 Defendant

23 v.

24 GGW DIRECT, LLC, a Delaware limited
 25 liability company; GGW BRANDS, LLC, a
 26 Delaware limited liability company; GGW
 27 EVENTS, LLC, a Delaware limited liability
 28 company; MANTRA FILMS, INC., a
 suspended Oklahoma corporation; BLUE
 HORSE TRADING, LLC, a California limited
 liability company; PEPE BUS, LLC, an inactive
 Montana limited liability company; SANDS
 MEDIA, INC., a revoked Nevada domestic

Adversary Case No.: 13-01050-MKN

Chapter 11

**MOTION FOR JUDGMENT ON THE
 PLEADINGS PURSUANT TO FED. R.
 CIV. P. 12(C), OR IN THE
 ALTERNATIVE, MOTION TO
 STRIKE PURSUANT TO FED. R. CIV.
 P. 12(F); MEMORANDUM OF POINTS
 AND AUTHORITIES IN SUPPORT
 THEREOF**

1 corporation; JOSEPH R. FRANCIS, an
2 individual; DAVID R. HOUSTON, an
3 individual; and DAVID R. HOUSTON, LTD., a
4 Nevada professional corporation, doing
business as THE LAW OFFICE OF DAVID R.
HOUSTON,

5 Defendants

6 GGW GLOBAL BRANDS, INC., as successor
in interest of certain assets of PEPE BUS, LLC

7 Counterclaimant and
8 Crossclaimant

v.

9 WYNN LAS VEGAS LLC d/b/a WYNN LAS
10 VEGAS

11 Counterclaim Defendant

12 -and-

13 GGW DIRECT, LLC; GGW BRANDS, LLC;
14 and GGW EVENTS, LLC

15 Crossclaim Defendants

NOTICE OF MOTION

2 Wynn Las Vegas, LLC d/b/a Wynn Las Vegas (“Wynn Las Vegas”) hereby moves (the
3 “Motion”) pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure and Rule 12(c) of
4 the Federal Rules of Civil Procedure to dismiss the entirety of *the Answer to Complaint,*
5 *Counterclaim, and Crossclaim by GGW Global Brands Inc.* [Docket No. 27] (the “Global Brands
6 Answer”), filed on August 14, 2013, on the grounds that GGW Global Brands, Inc. is improperly
7 attempting to participate in this action as a nonparty, and has failed to file a formal motion for
8 intervention as is required. In the alternative, Wynn Las Vegas hereby moves pursuant to Rule
9 7012 of the Federal Rules of Bankruptcy Procedure and Rule 12(f) of the Federal Rules of Civil
10 Procedure to strike the entirety of the pleading on the same grounds as an improper defense and
11 pleading.

12 This Motion is supported by the following Memorandum of Points and Authorities and
13 the pleadings and papers on file.

15 || Dated: September 10, 2013

BROWNSTEIN HYATT FARBER SCHRECK,
LLP

Bv:

Mitchell J. Langberg

Atorneys for Wynn Las Vegas, LLC, d/b/a
Wynn Las Vegas

MEMORANDUM OF POINTS AND AUTHORITIES

GGW Global Brands, Inc. (“Global Brands”), an entity claiming to be the successor-in-interest to one of the named defendants in this action, Pepe Bus, LLC, filed *the Answer to Complaint, Counterclaim, and Crossclaim by GGW Global Brands Inc.* (“Answer and Counterclaim”) on August 14, 2013. Global Brands itself is not a part to this action, and none of the existing parties have sought leave to join Global Brands as a party.

A Rule 12(c) motion for judgment on the pleadings is properly granted when there is no issue of material fact in dispute, and the moving party is entitled to judgment as a matter of law. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). Under Federal Rule of Civil Procedure 12(f), the Court can strike any improper defense or any improper matter. *F.D.I.C. v. Johnson*, 2:12-CV-00209-KJD, 2012 WL 5818259 (D. Nev. Nov. 15, 2012) (referencing *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 432–33 (9th Cir. 2011)).

The law is clear: if a third party is not a party to an action, and if none of the existing parties seek leave to join the third party through an appropriate joinder device, the third party can only participate in the action by filing a motion to intervene under Rule 24 of the Federal Rules of Civil Procedure (as applicable pursuant to Federal Rules of Bankruptcy Procedure 7024). *Parker-Hannifin Corp. v. Samuel Moore and Co.*, 436 F. Supp. 498, 500 (N.D. Ohio 1977); *Paine, Webber, Jackson & Curtis Inc. v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 564 F. Supp. 1358, 1371 (D. Delaware 1983); *Spangler v. Pasadena City Board of Education*, 552 F. 2d 1326, 1329 (9th Cir. 1977) (it was error to allow third parties who had not formally intervened to participate in legal proceedings).

Because Global Brands is not a named party in this proceeding, has failed to be properly joined to this action, and has failed to file a motion to intervene, the entirety of the Answer and Counterclaim is improper. Based on the foregoing, Wynn Las Vegas requests that the Court either dismiss the entirety of the Answer and Counterclaim under Rule 12(c) of the Federal Rules

1 of Civil Procedure, or in the alternative, strike the entirety of the Answer and Counterclaim under
2 Rule 12(f) of the Federal Rules of Civil Procedure.

3 Dated: September 10, 2013

4 BROWNSTEIN HYATT FARBER SCHRECK,
5 LLP

6 By:

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Mitchell J. Langberg

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Attorneys for Wynn Las Vegas, LLC, d/b/a
Wynn Las Vegas